

30 SEP 2002

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In re Application of
Gallert et al.
Application No. 09/807,146
PCT No.: PCT/EP99/07518
Int. Filing Date: 07 October 1999
Priority Date: 09 October 1998
For: Polyglucan And Polyglucan Deriv-
atives Which Can Be Obtained From
Amylosucrase By Biocatalytic Prod...

DECISION ON

PETITION UNDER

37 CFR 1.137(b)

This is in response to the petition under 37 CFR 1.137(b) filed on 08 August 2002.

BACKGROUND

This international application was filed on 07 October 1999, claiming priority of an application filed on 09 October 1998. A Demand electing the United States appears to have been filed prior to the elapse of 19 months from the priority date. Accordingly, the 30 month time period for paying the basic national fee in the United States expired at midnight on 09 April 2001. This international application became abandoned with respect to the United States for failure to timely pay the required basic national fee.

On 06 April 2001, applicants filed, *inter alia*, the basic national fee.

On 24 July 2001, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring an oath or declaration and a surcharge under 37 CFR 1.492(e). This was accompanied by a Notification Of A Defective oath Or Declaration (Form PCT/DO/EO/917) indicating that the declaration was unsigned, and by a Notification To Comply With Requirements... (Form PCT/DO/EO/920) requiring that applicant provide an initial or substitute computer readable form of the sequence listing and a statement that the contents of the paper or compact disc and the computer readable form are the same and, where applicable, include no new matter.

On 15 April 2002, applicants filed a "Status Inquiry."

On 05 June 2002, a Decision was mailed to applicants, dismissing the request for relief in the "Status Inquiry" on the basis that the Form PCT/DO/EO/920 was proper and that applicant had failed to timely reply to it. Applicants were advised that the application had become abandoned with respect to the U.S. for failure to timely reply to the Form PCT/DO/EO/920 of 24 July 2001. Applicants were further advised that the translation filed on 06 April 2001 was not a true and accurate translation of the international application as filed.

Applicants filed the instant petition on 08 August 2002.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Regarding requirement (1), applicants have filed the required reply in the form of the sequence listing and statement that the contents of the paper or compact disc and the computer readable form are the same and include no new matter.

It is also noted that applicants have filed a translation of the international application as filed, on 08 August 2002.

Regarding requirement (2), the petition fee accompanied the petition.

Regarding requirement (3), the petition includes a statement that "the entire delay in filing the national phase from the deadline for doing so until the filing of this petition pursuant to this paragraph was unintentional." This statement is being construed as a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Petitioner must notify the Patent and Trademark Office if such an interpretation of the statement in the petition is not correct. Thus, the statement in the petition is being accepted in satisfaction of 37 CFR 1.137(b)(3).

Regarding requirement (4), no terminal disclaimer is required because the international filing date of this application is later than 8 June 1995.

DECISION

The petition under 37 CFR 1.137(b) is **GRANTED**.

Counsel's Deposit Account No. 13-2855 is being charge in the amount of \$130.00 for the processing fee under 37 CFR 1.492(f), as authorized in the instant petition.

This application is being forwarded to the National Stage Processing Branch for further processing. The date of this application under 35 U.S.C. 371 is **08 August 2002**.



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